A **WANG SU SING**

**v.**

**HJ ZAMARI HJ MOHD RAMLI & ORS**

B HIGH COURT MALAYA, IPOH
LEE SWEE SENG JC
[JUDICIAL REVIEW NO: 25-66-10-2012]
14 AUGUST 2013

C ***ADMINISTRATIVE LAW:*** *Judicial review - Certiorari - Application for certiorari order to quash decision on acquisition - Application for prohibitory order to restrain dealings in land pending disposal of application - Whether acquisition for 'public purpose' - Land Acquisition Act 1960, s. 3(1)(a)*

D ***LAND LAW:*** *Acquisition of land - Acquisition by State Authority - Land owner obtained orders for vacant possession and eviction of occupiers and squatters on land - Whether subsequent acquisition by State Authority defeated orders obtained - Whether acquisition for public purpose - Whether acquisition will have effect of allowing squatters and illegal* E *occupiers to remain on land - Land Acquisition Act 1960, s. 3(1)(a)*

***WORDS AND PHRASES:*** *'In situ' - Meaning of - In its original or natural position or place - Application for relocation of squatters - Whether squatters and illegal occupiers allowed to remain in original place - Land* F *Acquisition Act 1960, ss. 3(1)(a), 3(2)(a)*

The applicant owned three pieces of land in Pulau Pangkor ('subject land') which were occupied by illegal occupiers and squatters. The applicant took legal proceedings and obtained an G order for vacant possession and eviction of the illegal occupiers and squatters on 12 December 2007. However, on 17 August 2012 the respondents, pursuant to the gazette in Form D premised under s. 3(1)(a) of the Land Acquisition Act 1960 ('LAA') acquired the subject land for the 'Penempatan Semula H Secara Lisan *In-situ* Penduduk di Wilayah Pulau Pangkor, Mukim Lumut, Daerah Manjung'. The word *in-situ*, which was not a commonly used word is Latin which meant 'in its original or natural position or place'. Therefore, the applicant alleged that this allowed the illegal occupiers and squatters to stay on the subject I land in which the applicant had already obtained a court order to evict them. The applicant applied for leave for judicial review and prayed for an order of *certiorari* to quash the decision of the

respondents to compulsorily acquire the subject land and for a prohibitory order to restrain dealings in the subject land pending disposal of the application. The issues for determination, *inter alia,* were (i) whether the illegal occupiers and squatters were allowed to remain on the subject land pursuant to the acquisition as lawful occupiers; (ii) whether the acquisition to allow the specific group of illegal occupiers and squatters to stay on the subject land was within the meaning of 'public purpose' under s. 3(1)(a) of the LAA; and (iii) whether the acquisition was illegal and *ultra vires* of the powers of the respondents as prescribed under the LAA and ought to be quashed on grounds of illegality and irrationality.

**Held (allowing application with no order as to costs):**

**(1)** The expressed purpose of the 'penempatan semula secara *in situ*' could only mean the relocation of the squatters already on the subject land onto the same position and place where they previously have been, such that they could be there permanently without the need to be relocated elsewhere and certainly not to be pushed out of their existing position and place where they had originally occupied and naturally nestled. Since a court order had been obtained for the removal of squatters, the state's insistence to re-settle the squatters *in-situ* on that same place in the subject land had the ultimate effect of rendering sterile the court order and nullifying it. (paras 13 & 29)

**(2)** A noble purpose does not necessarily convert into 'public purpose' and public benefit cannot be equated to a 'public purpose'. The class of persons being squatters on the subject land could not be for 'public purpose' as it only benefited that class of persons. Thus, the state, by legitimising the occupation of the subject land by the squatters to that of lawful occupiers could only be said to have benefitted tangibly the squatters already on the subject land and not the public as a whole, irrespective of the size of the group of people. (paras 22 & 23)

**(3)** The acquiring authority had vast powers under the LAA. However, when it had exceeded the perimeters of its powers and gone beyond the scope of its statutory powers under the acquiring section in s. 3(1)(a) of the LAA, the court was allowed under the principle of illegality and irrationality to grant prayers for judicial review. The decision of the state to

indirectly legitimise what was unlawful occupation of the subject land when it was not shown why the squatters could not be relocated elsewhere would be unreasonable in the circumstances of the case and ought to be quashed on the ground of irrationality. (paras 28 & 31)

**Case(s) referred to:**

*Ahmad Saman v. Kerajaan Negeri Kedah [2004] 1 CLJ 211 CA* ***(dist)***

*Hamabai Framjee Petit v. Secretary of State for India [1914-15] 42 IA 44* ***(refd)***

*Honan Plantations Sdn Bhd v. Kerajaan Negeri Johor & Anor and Another Appeal [1998] 3 CLJ 253 CA* ***(refd)***

*Minister of Finance, Government of Sabah v. Petrojasa Sdn Bhd [2008] 5 CLJ 321* ***(foll)***

*R Rama Chandran v. Industrial Court of Malaysia & Anor [1997] 1 CLJ 147 FC* ***(refd)***

*S Kulasingam & Anor v. Commissioner of Land, Federal Territory & Ors [1982] CLJ 65; [1982] CLJ (Rep) 314 FC* ***(dist)***

*Sabil Mulia (M) Sdn Bhd v. Pengarah Hospital Tengku Ampuan Rahimah & Ors [2005] 2 CLJ 122 CA* ***(foll)***

*Sri Devi Nagar Residences Welfare Association, rep by its President GP Godhanavalli, Coimbatore & Anor v. Subbathal and Ors [2007] 3 MLJ 990* ***(refd)***

**Legislation referred to:**

Land Acquisition Act 1960, ss. 3(1)(a), (c), 8, 10, 14, 16

*For the applicant - Conrad Young (Sheanna Shanta with him); M/s Vidhya Sheanna Low & Partners*

*For the respondents - Hamzah Ismail; Assistant State Legal Advisor*

*Reported by Sandra Gabriel*

## JUDGMENT

**Lee Swee Seng JC:**

**[1]** The applicant was keen on a piece of land of about two acres which is adjoining to his current two pieces of contiguous land. He bought the land at a public auction in 2000 and that together with his existing two pieces he now has about 13 acres. The three pieces of land were held under Grant 63782, Lot 3486, Lot 3492 and Lot 4012 Pulau Pangkor, Mukim of Lumut, District of Manjung, Perak. The subject land of two acres was held under Geran 63782, Lot 3486 Pulau Pangkor, Mukim of Lumut, District of Manjung, Perak ("the subject land").

**[2]** There were illegal occupiers and squatters on the subject land. The applicant took legal proceedings and obtained an order on 12 December 2007 from the Ipoh High Court in Originating Summons No. 24-1986-2004 for *inter alia* vacant possession and eviction of the occupiers and squatters.

## Problem

**[3]** His elation evaporated when he learned that on 17 August 2012, the third respondent had published in the "Government of Perak Gazette" a "Declaration of Intended Acquisition" of the land in Form D dated 16 August 2012 issued by the second respondent pursuant to s. 8 of the Land Acquisition Act 1960 ("LAA") ("the acquisition"). The second respondent is Dato' Syed Mokhtar bin Syed Iddris, the State Director of Land and Mines, Perak. The third respondent is the Government of the State of Perak.

**[4]** Following the acquisition, the relevant Forms E, G and H were issued by the first respondent, Haji Zamary bin Haji Mohd Ramli, the Land Administrator for Manjung Land Office, under the LAA.

**[5]** As can be seen from the gazette in Form D, the acquisition was premised "... under s. 3(1)(a) of the Land Acquisition Act 1960 [Act 486] for the "Penempatan Semula Secara *In-situ* Penduduk di Wilayah Pulau Pangkor, Mukim Lumut, Daerah Manjung."

**[6]** "*In-situ*" is not a commonly used word and more so when the whole gazette notification is in Bahasa Malaysia. It is a term having its roots in Latin meaning "in its original or natural position or place". The applicant was clear beyond doubt that from the very words of the Form D the acquisition was for the purpose of "re-location" of persons to the "original position or place" they were in." In other words, it was to allow those illegal occupiers/squatters to stay on the subject land in which they were illegally occupying/squatting in the first place, and which the applicant had already obtained a court order on 12 December 2007 to evict them.

## Prayers

**[7]** The applicant first applied for leave for judicial review and the leave application was objected to by Encik Ahmad Hanir Senior Federal Counsel (SFC) from the Attorney General's

A Chambers. After hearing counsel from both sides, leave was granted and there was no appeal from the decision of this court granting leave. This then is the substantive hearing of the application for judicial review where the applicant has prayed for the following:

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(1) An order of *certiorari* to remove into the High Court for the purpose of it being quashed the decision of respondents ("the decision") to compulsorily acquire all that land measuring 2.01027 acres held under Grant 63782, Lot 3486, Pulau
C Pangkor, Mukim of Lumut, District of Manjung, State of Perak ("the subject land") including but not limited to the issuance of the notices in:

(a) Form D dated 16 August 2012 pursuant to s. 8 of the Land Acquisition Act 1960;

D

(b) Form E dated 29 August 2012 pursuant to s. 10 of the Land Acquisition Act 1960;

(c) Form G dated 25 August 2012 pursuant to s. 14 of the
E Land Acquisition Act 1960; and

(d) Form H dated 25 September 2012 pursuant to s. 16 of the Land Acquisition Act 1960;

(collectively "the notices")

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(2) An order of prohibition be issued prohibiting the respondents from proceeding with any act pursuant to the decision and the notices;

G (3) An order staying the implementation of the decision and the notices including of any act in furtherance thereof pending the disposal of this application, and if leave is granted, until the application for such relief contemplated above is disposed of;

(4) Costs of and occasioned by this application be provided for;

H

(5) Such further or other relief or directions as this Honourable Court deems fit in the circumstances of this case.

**[8]** An interim stay of the proceedings under the acquisition was
I granted on 9 January 2013 at the time leave was granted, which was then continued to last until the disposal of this substantive application.

## Principles

**[9]** Whether the acquisition to enable and allow that specific group of illegal occupiers/squatters on the subject land to stay on the subject land can be said to be within the "public purpose" under s. 3(1)(a) of the LAA.

**[10]** The said s. 3 of the LAA reads as follows:

(1) The State Authority may acquire any land which is needed:

(a) for any public purpose;

(b) by any person or corporation for any purpose which in the opinion of the State Authority is beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public; or

(c) for the purpose of mining or for residential, agricultural, commercial, industrial or recreational purposes or any combination of such purposes.

(2) An application for the acquisition of any land under paragraph (1)(b) or (c) shall be made in writing to the land Administrator in the form as prescribed in the Rules made under this Act.

(3) Any application made under paragraph (1)(b) or (c) shall be accompanied by:

(a) the project proposal;

(b) the layout and land acquisition plan;

(c) the preliminary Government valuation report of the land to be acquired; and

(d) such fee and deposit as may be prescribed in the Rules made under this Act:

Provided that the State Authority may grant partial or total exemption from the payment of any fee to any Federal or State corporation expressly empowered to hold land under any written law and where the acquisition is for the purpose of public utility. [[[Am.P.U.(B)16/2011]

(4) Subject to subsection (6), the Land Administrator shall transmit the application and the accompanying documents to the State Economic Planning Unit or, in the case of an application made in the Federal Territory of Kuala Lumpur, to the Committee if he is satisfied that they are in order.

A (5) The Land Administrator may reject any application which does not comply with the requirements in subsection (3).

(6) Where in respect of any land applied for under subsection (2) there is a development approval granted to the registered proprietor and the acquisition is not for the purpose of
B public utility, the State Authority shall not consider the application, and in every such case the Land Administrator shall reject the application.

**[11]** I agree with learned counsel for the applicant, Mr Conrad
C Young, that the key determinant here is the expression "public purpose". Put simply, this case would turn on whether the purpose for which the acquisition was done falls within the meaning of "public purpose" in s. 3(1)(a) of the LAA. If it does not, then the acquisition is illegal and *ultra vires* the powers of the
D respondents prescribed under the LAA.

**[12]** The word "*in-situ*" has been more or less consistently defined in various dictionaries Mr Conrad cited the following two:

(a) *Dictionary of Law* (*LB Curzon*)

E - "in its original or natural position"; and

(b) *Free Merriam-Webster Dictionary*

- "in the natural or original position or place";

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**[13]** Viewed in its proper context the expressed purpose of "Penempatan Semula Secara *In-situ* Penduduk di Wilayah Pulau Pangkor, Mukim Lumut, Daerah Manjung" or the "The Relocation *In-Situ* of the Residents in Wilayah Pulau Pangkor, Mukim Lumut,
G Daerah Manjung" can only mean the relocation of the squatters already on the subject land in question onto the same position and place where they previously have been, such that they can be there permanently without the need to be relocated elsewhere and certainly not to be pushed out of their existing position and place
H where they had originally occupied and naturally nestled. They remained undisturbed and unmoved.

**[14]** It cannot be stretched as the learned Assistant State Legal Adviser Encik Hamzah Ismail, would want to, to cover the
I residents in Pulau Pangkor who are not already on the subject land but are squatters in different places in Pulau Pangkor. If that had been the intention then the whole of Pulau Pangkor would have to be acquired such that any illegal squatters need not have

to be moved to another place but to stay put or remain *in-situ* where they already are! If the intention covers bringing other squatters not already on the subject land and bringing them, as part of the State Government's noble policy of zero-squatter population by 2015, then it is no longer a relocation *in-situ* of the squatters on the subject land but a relocation *ex-situ* onto the subject land.

**[15]** The question then is whether such a "relocation *in-situ*" would fulfil a "public purpose" having regard to the antecedent of the case?

**[16]** To begin with the expression "public purpose" is not defined in the LAA. That seems to be the position too in the equivalent Acts of many other jurisdictions. We have to turn to case law for an elucidation as to the extent of what may be envisaged and encompassed within the meaning of "public purpose".

**[17]** The starting point would be the case of *S Kulasingam & Anor v. Commissioner of Land, Federal Territory & Ors* [1982] CLJ 65; [1982] CLJ (Rep) 314; [1982] 1 MLJ 204. There, Hashim Yeop A Sani J (as he then was) at first instance held as follows:

> The expression "public purpose" is incapable of a precise definition. No one in fact has attempted to define it successfully. What all the textbooks have done is to suggest the tests to be applied in determining whether a purpose is a public purpose. Various tests have been suggested. **But in my view it is still best to employ a simple common sense test, that is, to see whether the purpose serves the general interest of the community**. (emphasis added)

**[18]** The holding which was not disturbed by the Federal Court when the case went on appeal.

**[19]** As Mr Conrad for the applicant pointed out, this in fact accords with the definition given by the Privy Council in the case of *Hamabai Framjee Petit v. Secretary of State for India* [1914-15] 42 IA 44, where Lord Dunedin in his advice adopted the view of Batchelor J and stated as follows:

> The argument of the appellants in reality rested upon the view that there cannot be a 'public purpose' in taking land if that land when taken is not in some way or other made available to the public at

large. Their Lordships do not agree with this view. They think the true view is well expressed by Batchelor J. in the first case, when he says:

> General definitions are, I think, rather to be avoided where the avoidance is possible, and I make no attempt to define precisely the extent of the phrase 'public purpose' in the lease; it is enough to say that, in my opinion, the phrase, whatever else it may mean, must include a purpose, that is, an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned.

**[20]** The Madras High Court had occasion to describe in an attempt to broadly define this elusive concept of 'public purpose' in *Sri Devi Nagar Residences Welfare Association, rep by its President GP Godhanavalli, Coimbatore & Anor v. Subbathal and Ors* [2007] 3 MLJ 990 when speaking through PD Dinakaran J on an issue concerning town planning, spoke of "public purpose" in the following terms:

> 6.1. The public purpose, of course, cannot and should not be precisely defined and its scope and ambit be limited. The public purpose is not static. It changes with the passage of time, need and requirement of the community. But, broadly speaking, public purpose means the general interest of the community, as opposed to the interest of an individual.
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> 6.2 The expression "public purpose" is not capable of the precise definition and has not a rigid meaning. It can only be defined by a process of judicial inclusion and exclusion. In order words, the definition of the expression is elastic and takes its colour from the statute in which it occurs, the concept varying with the time and state of society and its needs. Whatever furthers the general interests of the community as opposed to the particular interest of the individual must be regarded as a public purpose. ...

**[21]** Expressed in another way, would the acquiring of the subject land so as to legitimise and legalise the occupation of the squatters already there be a "public purpose"? Does it benefit the general interest of the community as opposed to the particular interest of the individual or even that of a collection of individuals already on the subject land? The applicant's stand is that it is not for a public purpose as the benefits are confined only to the people already occupying the subject land said to be about

40 households. The applicant's argument is that being so confined the element of benefitting a broader cross-section of people in the sense of fulfilling the general interests of the community is visibly missing. It is obviously and ostensibly benefiting the families already there and not the broader community and so lacks the 'public purpose' element.

**[22]** Stretching the argument further, perhaps the broader and general interest of the community can arguably be said to be served if the expressed purpose of the acquisition is to relocate squatters from other places in Pangkor Island to the subject land but this is not the case here as it is particularly and peculiarly to 'relocate *in-situ*'. In fact learned counsel for the applicant was prepared to concede this without admitting for his argument is still this: the class of persons being squatters on the subject land cannot be for a public purpose as it only benefits that class of persons. Further assuming for a moment that it is enlarged to allow other squatters on the Pangkor Island to be relocated there, it still falls short of a "public purpose" because it is still confined to that class of persons called squatters.

**[23]** This is not a case of the construction of a stadium (as in *Kulasingam*'s case) where all and sundry could use. It is not for the promotion of the tourism industry as in the case of *Ahmad Saman v. Kerajaan Negeri Kedah* [2004] 1 CLJ 211; [2003] 4 MLJ 705 which the Court of Appeal held to be coming within the meaning of a "public purpose". It is also not for the construction of a school for special children and the less-able in society for which no one should quibble let alone question the government for the greatness of a nation lies in how it treats the most vulnerable in its society. As Mr Conrad puts it, a noble purpose does not necessarily convert it into a "public purpose". Likewise a public benefit cannot be equated to a "public purpose." In other words the State by legitimising the occupation of the subject land by the squatters to that of lawful occupiers can only at best be said to have benefited tangibly the squatters already on the subject land and not the public as a whole irrespective of the size of this group of people. It may be that the spill-over effects is for the public good in that everyone has a roof over his head but that is quite different from saying that it is for a "public purpose."

**[24]** The applicant's stand is that if the said acquisition of the subject land had been under s. 3(1)(b) or (c) of the LAA then it might be more difficult for him to mount the challenge of a lack

of a "public purpose" element and he would have to explore other elements like perhaps the lack of good faith, gross unreasonableness and the like. Section 3(1)(b) and (c) of the LAA are reproduced below to refresh our memory:

> (1) The State Authority may acquire any land which is needed:
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> (a) ...
>
> (b) by any person or corporation for any purpose which in the opinion of the State Authority is **beneficial to the economic development of Malaysia** or any part thereof or **to the public generally or any class of the public**; or
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> (c) for the purpose of mining or for residential, agricultural, commercial, industrial or recreational purposes or any combination of such purposes. (emphasis added)

**[25]** As can be seen under s. 3(1)(b) "any class of the public" may come under the broad category of "beneficial to the economic development of Malaysia". As pointed out by Encik Hamzah Ismail for the respondents, the State has a zero-squatter policy and it hopes to resettle all squatters by the year 2015. That spirit can only be most laudatory and to be applauded. However if that be the case then the expressed purpose of the acquisition must be so stated to be under s. 3(1)(b) of the LAA.

**[26]** Likewise the State may decide to build a block of low-costs flats in the subject land so that the squatters there may move into the flats when completed. Encik Hamzah Ismail for the State alluded to a low-cost strategy of resettlement of the squatters in that ideally they do not have to move from where they already are and hence the term '*in-situ*.' If that be the case then the Acquisition can be made under s. 3(1)(c) of the LAA and the applicant would have little cause for complaint except perhaps to question the motive of acquiring the subject land when the applicant has secured a court order to evict the squatters and to have vacant possession of it. Are there not other lands within Pangkor Island that could be used for such a noble purpose without incurring unnecessary costs to the squatters and unduly disrupting their lives? Mr Conrad lamented that in a subsidiary sense the order of the court for eviction of the squatters on the subject land is being rendered toothless.

**Whether The Acquisition Of The Subject Land Ought To Be Quashed On Ground Of Illegality And Irrationality And A Prohibitory Order Granted Against The Said Acquisition**

**[27]** In *R Rama Chandran v. Industrial Court of Malaysia & Anor* [1997] 1 CLJ 147 at pp. 172-173 His Lordship Edgar Joseph FCJ explained the 'illegality' and 'irrationality' grounds in judicial review as follows:

> But, Lord Diplock's other grounds for impugning a decision susceptible to judicial review make it abundantly clear that such a decision is also open to challenge on grounds of 'illegality' and 'irrationality' and, in practice, this permits the Courts to scrutinise such decisions not only for process, but also for substance.
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> In this context it is useful to note how Lord Diplock defined the three grounds of review, to wit, (i) illegality, (ii) irrationality and (iii) procedural impropriety. This is how he put it:
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> > By 'illegality' as a ground for judicial review I mean that the decision maker must understand directly the law that regulates his decision making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided in the event of a dispute, but those persons, the Judges, by whom the judicial power of the state is exercisable.
> >
> > ...
> >
> > "Lord Diplock's first ground for challenge, namely, 'illegality', involves insisting that the authority or body whose decision is being impugned has kept strictly within the perimeters of their powers. A good example of this is the case of *Westminster City Council v Great Portland Estates Plc* [1985] AC 661, an *ultra vires* case, involving judicial construction of the Town and Country Planning Act 1971. The question for decision was whether the Act permitted the relevant authorities, by resort to their development plans, to support the retention of traditional industries or was the ambit of the Act such as to permit only 'land use' aims to be pursued? It was held that 'the character of the use of the land, not the particular purpose of a particular occupier' was the concern of planning and, therefore the authority could not seek to favour any particular occupant or class of occupant. By thus confining the relevant authority strictly to the four walls of the powers conferred upon them by the Act, the Court was involved in the exercise of reviewing the impugned decision for substance and not just process.

> Lord Diplock's second ground for challenge, namely, 'irrationality' recognises a different route whereby the substance of a decision may be reviewed by the Courts. By this means, Lord Diplock made it clear that despite being legal, that is to say within the powers conferred, a decision may nevertheless, be struck down, for being contrary to substantive principles. In the words of Lord Diplock, 'a decision which is so outrageous in its defiance of logic or of acceptable moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. (emphasis added)

**[28]** Whilst the acquiring authority has vast powers under the LAA, where it has misconstrued its powers or exceeded the perimeters of its powers or gone beyond the scope of its statutory powers under the acquiring section in s. 3(1)(a) as to what is a "public purpose", then this court is allowed under the principle of illegality and irrationality enunciated above to grant the prayers for judicial review to quash the decision. The relevant authorities have also been referred to in the Court of Appeal case of *Honan Plantations Sdn Bhd v. Kerajaan Negeri Johor & Anor* [1998] 3 CLJ 253; [1998] 2 MLJ 498 by His Lordship Gopal Sri Ram JCA (as he then was).

**[29]** The whole of Pangkor Island I would suppose would be big enough for the State Government to resettle or relocate any squatter population in the island and the policy of the State could still be carried out with no obstacle or impediment. Bearing in mind that a court order has been obtained for the removal of the squatters, the State's insistence on resettling the squatters *in-situ* on that same place in the subject land has the ultimate effect of rendering sterile the court order and in effect nullifying it.

**[30]** Indeed the Eviction Order of High Court of the Ipoh High Court of 12 December 2007 exhibited in exh. WSS 3 obtained against the defendants who are squatters on the subject land also included a declaration that the plaintiff who is the applicant here is not bound by any rights, interests or claims or tenancies of the defendants, their agents or servants who are currently occupying the three pieces of land which were not registered against the land when the plaintiff bought it at a public auction. There was also a declaration given that the defendants, their agents or servants or anyone occupying the said land have no rights, interests or claims whatsoever to remain on and occupy the land or to interfere with or threaten the plaintiff's rights to exclusion possession of the land

and a declaration that the plaintiff is entitled to exclusive possession of the land. There was also a further injunction given to restrain the defendants, their agents or servants and anyone occupying the land from continuing to occupy and be in possession of the land and further an injunction to restrain them from interfering with or threatening the plaintiff's rights of exclusive possession of the land.

**[31]** Encik Hamzah Ismail highlighted the fact that the respondents here were not parties there and are not bound by the decision of that court. Indeed the respondents here cannot be a necessary party to the originating summons there for various prayers including an eviction order. Be that as it may such a decision of the State to indirectly legitimise what was unlawful occupation of the subject land when it has not been shown why the squatters could not be relocated elsewhere in Pangkor Island would be unreasonable in the circumstances of the case and ought to be quashed on ground of irrationality.

**[32]** It would be recalled that the applicant is also praying for "(2) An order of prohibition be issued prohibiting the respondents from proceeding with any act pursuant to the decision and the notices."

**[33]** The Court of Appeal case of *Sabil Mulia (M) Sdn Bhd v. Pengarah Hospital Tengku Ampuan Rahimah & Ors* [2005] 2 CLJ 122 at pp. 133-134; [2005] 3 MLJ 325 at pp. 335-336 is authority for the proposition that there is no bar to an injunction against the Government and its agents and by extension a prohibition order as well in appropriate circumstances. His Lordship Gopal Sri Ram JCA (as he then was) opined as follows:

> [22] Our attention was also drawn by learned counsel for the appellant to *Saonah bte Bedul v. Pentadbir Tanah dan Daerah Melaka Tengah* [1994] 3 MLJ 758 where Mohd Noor J held (*obiter*) that an interim injunction could be issued against the defendant Land Administrator in that case or an officer of the Government by reason of s 29(2) of the Government Proceedings Act 1956 read together with ss 50, 51 and 54(d) of the Specific Relief Act 1950. We entirely agree with and endorse the views of the learned judge in that case. In our judgment, **the effect of current authority is that our courts have jurisdiction to grant interim and permanent injunctions against any servant of the Government**. Accordingly, there was no jurisdictional bar to the

A High Court granting the instant appellant the injunction it sought against the first respondent, the Director of the hospital in question. *Since a Government servant or a member of the Cabinet may be restrained by injunction, it is strictly unnecessary from a practical point of view to decide whether the Government itself may be restrained in appropriate circumstances.* Nevertheless, since the question is one which was argued before and ruled upon by the learned judicial commissioner, we think it behoves us to deal with the point. We accordingly proceed to consider the position of the second and third respondents, namely, the Ministry of Health and the Government of Malaysia. (emphasis added)

**[34]** The above proposition was given approval by the Federal Court in *Minister of Finance, Government of Sabah v. Petrojasa Sdn Bhd* [2008] 5 CLJ 321 pp. 347-348 (CLJ); [2008] 4 MLJ 641 at pp. 665-666 (MLJ) where His Lordship Arifin Zakaria FCJ (as the Chief Justice then was) said as follows:

> [76] In *Sabil Mulia (M) Sdn Bhd v. Pengarah Hospital Tengku Ampuan Rahimah & Ors* [2005] 3 MLJ 325, the Court of Appeal at p 333 stated:
>
> > We now turn to consider the position after 1948. It is axiomatic the Crown Proceedings Act 1948 was passed to improve the position of the citizen *vis-a-vis* his or her rights against the Crown. As Professor Wade in his article *Injunctive Relief against the Crown and Ministers* [1991] 107 Lq R 4 at 6 says:
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> > > The Crown Proceedings Act 1948 was a remedial statute, designed to put the Crown, so far as it could properly be done, into the position of an ordinary litigant, so that justice could be done without obstruction by the Crown's ancient immunities. As Lord Jauncey said in *British Medical Association v. Greater Glasgow Health Board* [1989] AC 1211 (where, incidentally, Lord Diplock's *Town Investment (Town Investment Ltd v. Department of the Environment* [1978] AC 359) *dicta* were once again disregarded), 'the general purpose of the Crown Proceedings Act was to make it easier rather than more difficult for a subject to sue the Crown', and the extension of immunities would 'run wholly counter to its spirit'.
>
> [77] In that case the Court of Appeal held, *inter alia*, that the courts have jurisdiction to grant interim and permanent injunctions against any servant of the government. It also held that it is too late in the day to argue that s 29 of the GPA bars the grant of

an interlocutory or even an interim injunction against the government. That is not the issue before us, as such I would not venture to say anything more on this save that **the courts have moved away from the traditional stand that no order of injunction may be granted against the government**.

[78] The position now is that the courts in the Commonwealth, Malaysia including, have moved away from the traditionalist approach that the Crown can do no wrong. Therefore, the courts in the Commonwealth jurisdictions generally have held that **the executive arms of the government is amenable to the judicial review proceedings**. In the landmark case of *Council of Civil Service Unions v Minister for the Civil Service* [1984] 3 All ER 935 (HL) at p 953 Lord Roskill said:

> Historically the use of the old prerogative writs of *certiorari*, prohibition and *mandamus* designed to establish control by the court of King's Bench over inferior courts or tribunals. But the use of those writs, and of their successors, the corresponding prerogative orders, has become far more extensive. They have come to be used for the purpose of controlling what would otherwise be unfettered executive action whether of central or local government ... this branch of public or administrative law has evolved, as with much of our law, on a case by case basis and no doubt hereafter that process will continue. Thus far this evolution has established that executive action will be the subject of judicial review on three separate grounds ... (emphasis added)

## Pronouncement

**[35]** Taking the circumstances of this case as a whole and considering that relocating the squatters *in-situ* would not constitute a public purpose within the meaning of s. 3(2)(a) of the LAA and bearing in mind that the applicant has also obtained an order for eviction of the squatters on the subject land, I was constrained to grant an order in terms of prayers (1) for an order of *certiorari* and (2) for an order of prohibition as prayed.

**[36]** As for costs bearing in mind that this is a matter of public law and that the law here should be allowed to develop through the litigation process on appeal, parties should not be unduly fettered by the costs factor. I had thus exercised my discretion and made no order as to costs.